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IN THE SUPREME COURT OF THE UNITED STATES

RALPH LEON CHAISSON

versus

HUNT SHIPYARD, A DIVISION OF HUNT TOOL COMPANY AND INSURANCE COMPANY OF NORTH AMERICA

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

TO THE HONORABLES, THE CHIEF AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES OF AMERICA:

The petitioner, Mrs. Joyce Ann Chaisson, prays that a writ of certiorari issue herein to review the judgment and decree of the United States Court of Appeals for the Fifth Circuit, affirming the granting of a summary judgment by the United States

District Court for the Eastern District of Louisiana.

OPINION BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit, affirming the District Court's judgment of dismissal, is reprinted as Appendix "A" hereof.

JURISDICTION

Original jurisdiction in this case is predicated upon the General Maritime Law.

STATEMENT OF THE CASE

On January 17, 1968, Ralph L. Chahoc, a fitter employed by Hunt Shipyard, a division of Hunt Tool Company, was injured aboard the Dry Dock No. 4 owned and operated by Hunt Shipyard, a division of Hunt Tool Company. Subsequent to the filing of that suit, Ralph L. Chahoc died and his wife was substituted as party-plaintiff, individually and for the use and benefit of her two minor children alleging

damages for wrongful death.

At the time of the accident, the Dredge No. 4, owned by Ingram Contractors, Inc. was in Hunt's Dry Dock No. 4 for minor repairs. Chahoc was one of several individuals employed by Hunt Shipyard to effect these repairs. At the time of the accident, he and three co-workers were walking across the deck of the Dry Dock No. 4 carrying a piece of knuckle plate to be welded to the Ingram Dredge. While so engaged, Chahoc slipped as a result of mud on the deck of the Dry Dock and as a result of other unseaworthy conditions.

The suit alleged that Chahoc's injuries and his subsequent death were caused by the unseaworthiness of the dry dock and the negligence of his employer.

An examination of plaintiff's complaint clearly illustrates that his action was founded on the doctrine of Reed v. Yaka, 373 U.S. 410; 83 S. Ct.

1349, 10 L. Ed. 488 (1963) contending that the dry dock upon which he was working was an employer-owned vessel and he was therefore able to maintain an action in tort based on unseaworthiness.

A motion for summary judgment contending there was no genuine issue of fact was filed by defendants, Hunt Shipyard and Insurance Company of North America, its insurer. The motion was granted by the Court on March 5, 1970. This was affirmed on appeal, the Fifth Circuit Court of Appeal applying and following its decision in Atkins v. Greenville Shipbuilding Corporation, 411 F. 2d 279 (Cir. 5, 1969).

REASONS FOR GRANTING THIS PETITION

A petition for a writ fo certiorari involving identical issues as the present case is presently pending in the case of: "Odis Russell v. Greenville Shipbuilding Corporation." We appeal to this Court to grant a review here for the sake of resolving conflicts between the decision in Atkins, the case at bar, the

decision of the Second Circuit in Bernardo v. Bethlehem Steel, 314 F. 2d 604 (Cir. 2, 1963), and the Fourth Circuit Case of United States of America v. Moran Towing And Transportation Company, Inc., 374 F. 2d 656 (4th Cir.)

ARGUMENT

The central and only issue in this case is:

CAN IT BE HELD AS A MATTER OF LAW THAT A DRY DOCK IS NOT A VESSEL?

In Atkins and the present case, the Court of Appeals held "sub judice" that it could and petitioner submits that its decision is completely contrary to the rationale of this Court's decisions and indeed, in direct conflict with several prior decisions of that Appellate Court and other Appellate Courts.

In Offshore Company v. Robinson, 266 F. 2d 769, (Cir. 5, 1959), an historic and landmark opinion, it was recognized that special purpose vessels and those who man them were subject to the

same maritime rules as traditional vessels and crews. Eight years later this same Appellate Court in a forward-looking decision that weighed present day realities in the maritime field held that such special purpose floating objects as a matter of law were vessels: Producers Drilling Company v. Gray, 361 F. 2d 432 (Cir. 5, 1967). This was followed in Kellar v. U. S., 273 F. Supp. 945 (U. S. D. C. New Orleans Division) and Boatel v. Delamore, 379 F. 2d 850 (Cir. 5, 1967).

In light of the above, it is somewhat surprising that the Court's opinion in Atkins and the present case harken back to criteria that it rejected over a decade ago, i. e.:

(1) Lack of motive power;

(2) Permanent anchorage;

(3) The fact that the dry dock was not designed or used for navigation or transportation.

Of course, dredges, derrick barges,

submersible drilling rigs (and numerous other types of specialized watercraft):

(1) Have not motive power;

(2) Spend months and/or years at a single anchorage;

(3) Are obviously not designed for navigation or the carriage of passengers and cargo.

Respondent's dry dock is admittedly a large, floating object moored in navigable waters. It is fully capable of carrying passengers, cargo and could be moved to transport goods and persons to any port in the world should its owner so desire. The law is clear that:

> "The word 'vessel' includes every description of watercraft or other artificial contrivance used or capable of being used, as a means of transportation on water." (Section 3 of Title 1 U.S.C.A.) (Emphasis added)

Vol. 1, Norris, The Law of Seamen, 2d Ed. Sec. 9.

The use to which an object is actually put is not

determinative. If it is capable of being used for water transportation, it is per se, a vessel. Movable oil rigs are neither designed nor used for transportation on water any more than is a dry dock.

Further, a craft or other structure need not be in navigation or engaged in commerce to qualify as a vessel. See M/V Marifax v. Thomas J. McCrory, 391 F. 2d 909 (5th Cir.).

A floating dry dock under some instances has been held to be a vessel. United States of America v. Moran Towing And Transportation Company, Inc., 374 F. 2d 656 (4th Cir.). Therefore, we respectfully submit the Fifth Circuit Court of Appeal was in error when it held that the dry dock was not a vessel while moored to the bank and operated as a dry dock.

SUMMARY

In conclusion, petitioner respectfully submits that the two opinions of the Fifth Circuit create an

arbitrary distinction where no difference exists.

It is patent that these holdings by the Fifth Citcuit are in direct conflict with Bernardo, supra, which expressly held the exact same issue to be one for a jury. The Appellate Court appears to completely lose sight of the fact that the decisions involving dry docks cited in Atkins were fact findings, not summary adjudications. Nor can the result be reconciled with the Fifth Circuit's decision in Producers' Drilling v. Gray, supra, except by forging a completely illogical rule to the effect that a special purpose craft drilling for oil, as a matter of law, is a vessel but one engaged in vessel construction, as a matter of law, "is not."

We believe this Court's decision in Butler v. Whitman, 356 U.S. 271; 2 F. 2d 754 (1958), constitutes an express ruling by this Court that issues such as here presented are for the jury.

We respectfully submit this floating dry dock, not permanently attached to the shore, is simply another type of special purpose vessel and no rational ground exists for exempting it from the doctrine of unseaworthiness simply because it was engaged in the mission of doing minor repair work on another vessel rather than dredging claim shells or exploring for petroleum at the time of the accident. The dry dock was a floating object, devoted to the task for which it was designed, and decedent has been employed aboard her to accomplish the mission and purpose of the vessel.

Respectfully submitted:

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9th Floor, 305 Baronne Street
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524-1393

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Petition for A Writ of Certiorari were mailed to opposing counsel.

New Orleans, Louisiana, January ____, 1971.

STEVEN R. PLOTKIN

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 27964
Summary Calendar*

MRS. JOYCE ANN FERRY CHAHOC, widow of RALPH LEON CHAHOC, individually and for the use and benefit of her minor children, MELODY SUE CHAHOC and PAMALA JUDY ANN CHAHOC,

Plaintiff-Appellant,

versus

HUNT SHIPYARD, a Division of HUNT TOOL COMPANY and INSURANCE COMPANY OF NORTH AMERICA

Defendants-Appellees.

Appeal from the United States District Court for the Eastern District of Louisiana

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(September 18, 1970)

Before WISDON, COLEMAN and SIMPSON, Circuit Judges.

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*Rule 18, 5th Cir.; See Isbell Enterprises, Inc., v. Citizens Casualty Co. of N.Y., et al., 5th Cir., 1970, ____ F.2d ____, Part I [No. 29278, August 14, 1970].

PER CURIAM: Ralph Chahoc was injured while employed by Hunt Shipyard in its Drydock No. 4 making repairs to Ingram Contractor, Inc.'s Dredge No. 4. He died after bringing suit below and his wife was substituted as plaintiff, individually and for the benefit of two minor children of the couple.

Chahoc, with three co-workers was carrying a heavy steel knuckle plate across the dry dock deck to be welded to the dredge when he slipped and fell, receiving severe injuries. The suit seeking recovery in addition to that allowed under the Longshoremen's and Harbor Workers' Compensation Act, asserted a "Yaka" seaman's[1] claim by alleging that Chahoc's injuries and subsequent death were caused by mud on the deck, resulting from the unseaworthy condition of the dry dock and the employer's

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1. Reed v. The Yaka, 373 U.S. 410, 83 S. Ct. 1349, 10 L. Ed. 2d 448 (1963).

negligence, contending that the dry dock was an employer-owned vessel. The court below granted the motion for summary judgment of Hunt Shipyard and its insurer, Insurance Company of North America, relying upon our decision in Atkins v. Greenville Shipbuilding Corporation, 5 Cir. 1969, 411 F. 2d 279, cert. denied 396 U.S. 846, 90 S. Ct. 105, 24 L. Ed. 2d 96 (1969), for the proposition that, as a matter of law, a floating dry dock is not a "vessel" when it is moored and in use as a dry dock.

We accept as correct appellant's contention that a floating dry dock may under some circumstances be a vessel.[2] Nevertheless we conclude that under the circumstances here as under those

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2. See U.S. v. Moran Towing and Transportation Company, 4 Cir. 1967, 374 F. 2d 656, 663, holding "we conclude that this floating dry dock while unmoored and under tow was within the Wreck Act***".

present in Atkins, supra, the equipment in question was not a vessel while moored to the bank and operated as a dry dock.

It therefore becomes unnecessary for us to determine the existence vel non of the other elements requisite to recovery under Reed v. Yaka: (a) whether Chahoc was doing work traditionally performed by seamen and (b) whether there are present here the factors which compelled the Supreme Court to ignore the literal language of the Longshoremen's and Harbor Workers' Compensation Act in Yaka. Further, we are not disposed to reverse Atkins, as appellant suggests.

We find no error in the granting of summary judgment by the district court.

AFFIRMED.

APPENDIX B

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

October Term, 19 69

No. 27964

D. C. Docket No. CA 68-1392 Sec. "D"

MRS. JOYCE ANN FERRY CHAHOC, widow of RALPH LEON CHAHOC, individually and for the use and benefit of her minor children, MELODY SUE CHAHOC and PAMALA JUDY ANN CHAHOC,

Plaintiff-Appellant,

versus

HUNT SHIPYARD, a Division of HUNT TOOL COMPANY and INSURANCE COMPANY OF NORTH AMERICA

Defendants-Appellees.

Appeal from the United States District Court for the Eastern District of Louisiana

Before WISDOM, COLEMAN and SIMPSON, Circuit Judges.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Eastern District of Louisiana, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed;

It is further ordered that plaintiff-appellant pay to defendants-appellees, the costs on appeal to be taxed by the Clerk of this Court.

September 18, 1970

Issued as Mandate: October 23, 1970

APPENDIX C

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 29764
Summary Calendar*

MRS. JOYCE ANN FERRY CHAHOC, widow of RALPH LEON CHAHOC, individually and for the use and benefit of her minor children, MELODY SUE CHAHOC and PAMALA JUDY ANN CHAHOC,
Plaintiff-Appellant,

versus

HUNT SHIPYARD, a Division of HUNT TOOL COMPANY and INSURANCE COMPANY OF NORTH AMERICA,
Defendants-Appellees.

Appeal from the United States District Court for the Eastern District of Louisiana

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(October 15, 1970)

ON PETITION FOR REHEARING

Before WISDON, COLEMAN and SIMPSON, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby denied.

SUPREME COURT, U. S.

FILED

FEB 5 1971

E. ROBERT SCAVER, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 1212

RALPH LEON CHAHOC

versus

HUNT SHIPYARD, A DIVISION OF HUNT TOOL COMPANY and INSURANCE COMPANY OF NORTH AMERICA

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

No. 1212

RALPH LEON CHAHOC

versus

HUNT SHIPYARD, A DIVISION OF HUNT TOOL COMPANY and INSURANCE COMPANY OF NORTH AMERICA

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

OPINION BELOW

The opinion below is reported officially in 431 F.2d 576.

QUESTIONS PRESENTED FOR REVIEW

The question posed by the petition presents merely the threshold issue to the ultimate issue presented for review, namely, whether respondent's motion for summary judgment was properly granted. In its motion for summary judgment, respondent advanced three separate grounds for the dismissal of petitioner's complaint.

The opinions below are based simply on this threshold issue, namely, that under the facts of this case, the drydock was not a vessel as a matter of law. Before a cause of action can be stated, however, petitioner must also show that Chahoc was doing work traditionally done by seamen and that the factors which compelled this Court to disregard the literal language of the LHWA in *Reed v. Yaka*, 373 U.S. 410, 83 S.Ct. 1349 (1963) are present here as well. *Chahoc v. Hunt Shipyard*, 431 F.2d 576, 577 (CA 5 1970).

ARGUMENT

The threshold issue, whether a drydock under the facts of this case is not a vessel as a matter of law, was previously presented to this Court in *Atkins v. Greenville Shipbuilding Corporation*, 411 F.2d 279 (CA 5 1969) *cert. denied* 396 U.S. 846, 90 S.Ct. 105 (Oct. 13, 1969). Since this Court's action in *Atkins*, *supra*, there has been no significant change in the jurisprudence. The alleged conflict of *Atkins* with *Bernardo v. Bethlehem Steel Company*, 314 F.2d 604 (CA 2 1963) was urged by the petitioner in *Atkins* and the alleged conflict of *Atkins* with *United States v. Moran Towing & Transportation Co.*, 374 F.2d 656 (CA 4 1967) simply does not exist.

In *Moran*, the Court does not conclude that a floating drydock, while moored to the bank and operating as a drydock, is a vessel, it merely concludes as follows:

> "We conclude that this floating drydock while *unmoored and under tow* was within the meaning of the Wreck Act. . ." *United States v. Moran Towing & Transportation Co.*, 374, F.2d 656, 663 (CA 4 1967). (Emphasis ours).

On this threshold issue, therefore, we submit that no conflict exists between the Circuits and the present petition should be denied.

Two additional reasons exist, however, for denial of the present petition. Even if the drydock was a vessel, Chahoc was not doing work traditionally done by seamen, See *United N. Y. and N. J. Pilots Association v. Halecki*, 358 U.S. 613 (1959); *West v. United States*, 361 U.S. 118 (1959); *Roper v. United States*, 368 U.S. 20 (1961); *Berryhill v. Pacific Far East Line*, 238 F.2d 385 (9 Cir., 1956), cert. den. 354 U.S. 938 (1957); *Ocean Drilling & Exploration Company v. Berry Bros. Oilfield Service, Inc.*, 377 F.2d 511 (5 Cir., 1967); *Moye v. Sioux City & New Orleans Barge Lines, Inc.*, 402 F.2d 238 (5 Cir., 1968); *Parker v. Cargill, Inc.*, 417 F.2d 772 (5 Cir., 1969); *Berge v. National Bulk Carriers, Inc.*, 148 F.Supp. 608 (S.D. N.Y., 1957); *Raidy v. United States*, 153 F.Supp. 777 (D. Md., 1957), affirmed 252 F.2d 117 (4 Cir., 1958); *Warren v. Pacific Inland Navigation Company*, 204 F. Supp. 31 (D. Ore., 1962); *Madden v. United States*, 259 F.Supp. 663 (D. Mass., 1966).

Finally, even if the drydock was a vessel and Chahoc was doing the work traditionally done by seamen, the factors which compelled this Court to disregard the literal language of the Longshoremen's and Harbor Workers' Act in *Reed v. YAKA* are not presented here.

In *Reed v. YAKA*, *supra* this Court was faced with a situation where one group of longshoremen, whose duties involved the loading and unloading of ships of nonemployers, were protected by the warranty of seaworthiness, while a second group of longshoremen doing exactly the same type of work on vessels operated by their em-

ployer were not protected by the warranty. This, this Court reasoned, was an arbitrary and unjust situation. An injured longshoreman's legal remedies, this Court stated, should not be determined by the signature of his paycheck. "All were subjected to the same danger. All were entitled to like treatment under law." 373 U.S. at 415, 10 L. Ed. 2d at 543, citing *Pope & Talbot, Inc. v. Hawn*, 346, 413, 74 S. Ct. 202, 98 L. Ed. 143, 152 (1953).

In *Reed v. YAKA*, this Court found an overriding and compelling circumstance which it felt required the disregarding of the literal wording of the exclusiveness of liability provision of the Longshoremen's and Harbor Workers' Compensation Act. That compelling situation was the distinction theretofore existing in the law between the remedies of longshoremen who were employed by the owner or operator of the offending vessel and the remedies of longshoremen not employed by the owner or operator of the offending vessel.

In the present case, this Court is concerned with drydock workers working on a floating drydock. There are three basic types of drydocks: the marine railway and the graving dock both of which are on land, and the floating drydock. The men who worked upon these three different types of drydocks all do substantially the same type of work. There is no arbitrary and unreasoned distinction drawn between different groups of drydock workers. Under the present state of the law, all drydock workers are being treated equally, the precise result for which this Court strove and achieved in *Reed v. YAKA*. All drydock workers injured while engaged in work upon drydocks of all these types have a remedy under the Longshoremen's and Harbor Workers' Compensation Act. As the law now stands, no drydock workers of any variety

have a right to sue their employers under the general maritime law for negligence and/or for the unseaworthiness of the drydock upon which they are working. Equally, and without distinction, workers on marine railways, on graving docks and on floating drydocks are treated alike under the law.

Thus, to afford to petitioner the relief here sought would create the very arbitrary distinction between workmen who are subject to the same risk which this Court refused to permit in *Reed v. YAKA*.

CONCLUSION

For the reasons stated above, Respondent respectfully suggests that there are no special or important reasons present in this case to support the granting of the Petition for a Writ of Certiorari. The decisions of the Court of Appeal in *Atkins* and in the instant case are sound. There is no reason for further review.

Respectfully submitted,

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February , 1971

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